



David B. Cohen
Mayor

CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development

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DATE: March 19, 2004

TO: Board of Aldermen

FROM: Michael Kruse, Director of Planning and Development
Alexandra Ananth, Planner

SUBJECT: Docket item #332-03, ALD. LIPSITT requesting discussion of possible ordinance amendment to control construction of fences or walls on or near property lines

CC: Mayor David B. Cohen
Brooke K. Lipsitt

The purpose of this memorandum is to provide the Board of Aldermen, the Mayor, and the public with technical information and planning analysis which may be useful in the decision making process of the Board. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Zoning and Planning Committee of the Board of Aldermen will consider in its discussion at a subsequent Working Session.

I. Background

Over the past two years there has been what seems like a proliferation of solid barrier fences going up along the sidewalks and streetscapes of Newton (*See attached Guest Commentary from the Newton Tab, Summer 2003*). In August 2003, an informal Committee comprised of representatives from the Board of Aldermen, Planning Department, and Law Department was formed to study the feasibility of establishing criteria for the location, appearance, and maintenance of perimeter fences. The intent was to draft a proposed amendment to Chapter 20 of the City's Revised Ordinance that promoted the open and natural characteristics of Newton's streetscapes and assured the safe visibility of both pedestrians and motor vehicular traffic. Currently there are no restrictions as to the type, height, or setbacks of privacy fences in Newton, and no building permit is required for fences less than 6 ft. tall.

Then Alderman Lipsitt and Planning Department staff made a presentation at the September 22, 2003 meeting of the Zoning and Planning Committee, which included showing examples of existing fences in Newton. The Zoning and Planning Committee

discussed the matter and decided that there was sufficient interest to proceed and explore creation of a proposed Ordinance.

The informal Fence Committee conducted further research and prepared a draft Ordinance for the regulation of fences, which was discussed at a December 2003 Working Session of the Zoning and Planning Committee. The draft Ordinance was also e-mailed to the Newton Historical Commission, all three local Historic District Commissions, the Parks and Recreation Department, School Department, and the Urban Design and Beautification Commission (UDBC). Because of the potential widespread application of this proposed Ordinance, some Aldermen requested a public hearing before final action was taken by the Zoning and Planning Committee.

II. Analysis

As a result of the discussions with ZAP and feedback from other Commissions and Departments, the Planning and Law Departments developed a final draft Ordinance, which is attached.

Highlights of the proposed Ordinance include:

- A fence permit application would be required for fences greater than 4 ft. in height;
- Repairs to existing fences would not require a permit;
- In residential districts, fences taller than 4 ft. must be set back a minimum of 1 ft. for each foot that exceeds 4 ft. in height, up to a maximum of 6 ft. in height if bordering the front lot line;
- Fences abutting limited access highways may be allowed up to 12 ft. in height;
- Fences located in a local historic district would need approval of the appropriate Commission prior to submitting an application for a fence permit;
- No solid fences except those made of stone shall be permitted along a scenic road;
- The Commissioner of Inspectional Services shall enforce the Ordinance; and
- The UDBC may grant exceptions to the proposed Ordinance if compliance would involve substantial hardship.

III. Recommendation

Over the past two years there has been what seems like a proliferation of solid barrier fences going up along the sidewalks and streetscapes of Newton, creating a “tunnel effect” and blocking visual open space. The Planning Department believes this proposed Ordinance addresses concerns raised in past discussions and that the establishment of a Fence Ordinance is in the interest of public safety and will help promote the natural and open characteristics of Newton’s streetscapes.

CITY OF NEWTON
IN BOARD OF ALDERMEN

DECEMBER 15, 2003

ORDINANCE NO. X-

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEWTON
AS FOLLOWS:

That the offenses and miscellaneous regulations, Chapter 20 of the Revised Ordinances of the City of Newton, Massachusetts 2001, as amended, be and are hereby further amended as follows:

1. Add a new section 20-40 as follows:

Sec. 20-40. Regulation of Fences.

(a) *Purpose:* The purpose of these regulations is to establish criteria for the location, appearance and maintenance of perimeter fences. The intent is to regulate the location and type of fences in order to promote the open and natural characteristics of Newton streetscapes and neighborhoods, to protect the passage of pedestrians on city sidewalks, and to assure the safe visibility of both pedestrians and motor vehicular traffic.

(b) *Definitions:* As used in this ordinance, the following terms shall be defined as set forth herein, unless otherwise stated:

Appropriate Materials: Materials normally manufactured for, used as, and recognized as fencing materials, including but not limited to, wrought iron or other decorative metals suitable for the construction of fences, fired masonry, concrete, stone, wood, vinyl and chain link. Such materials must be suitable for exterior use and weather and decay-resistant, provided that this requirement shall not prevent the use of wood which is untreated or unpainted.

Fence: Any permanent partition or barrier more than twelve (12) inches in height from the natural grade (or the top of a retaining wall if a fence is placed on such wall) bordering or parallel to and within five (5) feet of a lot line that in whole or in part defines the boundaries of said lot. A retaining wall or landscaping material such as hedges shall not be considered a fence. Fences located within the interior of a lot that do not serve to define a lot boundary are not subject to regulation pursuant to this ordinance.

Height: The vertical distance measured from the natural grade of the ground at the location where the fence is erected (or from the top of a retaining wall if a fence is placed on such wall) to the top of the fence panel. Fence supports such as posts, columns, piers or pilasters, as well as gates and arbors may exceed the height restriction contained in this ordinance by not more than twenty-four (24) inches. In cases where the top of the fence panel is curved, the height shall be calculated using the average of the highest and lowest points on the top of the fence panel.

(INSERT DIAGRAM---HEIGHT)

Lot Line: The division line between individual lots established by a plan filed in the registry of deeds, except that the line between land of the commonwealth used as an aqueduct or land formerly an aqueduct now owned by the city and adjoining land shall not be termed a lot line.

Lot Line, Front: The lot line that borders a public or a private way.

Lot Line Rear: The lot line that is opposite the front lot line. In the case of corner lots as defined in Section 30-1 of the Revised Ordinances, as amended, the rear lot line shall be the lot line opposite the street faced by the main entrance of any house located on the lot.

Lot Line, Side: Any lot line that is not a front or rear lot line.

Legal Nonconforming Fence: Any fence that does not conform with the requirements of this ordinance shall be considered nonconforming. Fences erected prior to January 1, 2004 which do not conform with the requirements of this ordinance shall be considered legal nonconforming fences.

Repair: To restore by replacing one or more sections or panels of a fence with in-kind material as well as routine maintenance, such as painting.

(c) *Requirement of a Permit:* Any person erecting a fence greater than four (4) feet in height shall first obtain a fence permit from the Commissioner of Inspectional Services. Any person seeking to repair an existing fence shall not be required to obtain a fence permit. A permit fee not to exceed \$40.00 shall be paid by the applicant for such fence permit, except the City of Newton shall be exempt from payment of said fee. The Commissioner of Inspectional Services shall issue the fence permit if he or she finds that the proposed fence complies with all the requirements of this ordinance. An individual who has been denied a fence permit by the Commissioner may appeal such denial to the Urban Design and Beautification Commission in accordance with the procedure for such appeals established by the Commission. The Urban Design and Beautification Commission shall issue the fence permit if the Commission determines that the proposed fence complies with the requirements of this ordinance.

(d) *Regulation of Fences in Residential Zoning Districts:*

The height of fences located in residential zoning districts shall be regulated as follows:

(1) Fences bordering the front lot line: No fence or portion of a fence bordering or parallel to the front lot line shall exceed four (4) feet in height unless such fence is set back from the front lot line one (1) foot for each foot or part thereof such fence exceeds four (4) feet in height, up to a maximum of six (6) feet in height.

(2) Fences bordering side lot lines: No fence or portion of a fence bordering or parallel to a side lot line shall exceed six (6) feet in height, except as provided in subsection (5) below.

(3) Fences bordering the rear lot line: No fence or portion of a fence bordering or parallel to a rear lot line shall exceed six (6) feet in height, except as provided in subsection (5) below.

(4) Limited access highway fences: Regardless of whether the fence is located along the front, side or rear lot lines, the height of fences abutting Route 95/128 or the Massachusetts Turnpike may be increased to a maximum of twelve (12) feet.

(5) Fences bordering side or rear lot lines where the entire length of said side or rear lot line immediately abuts nonresidential or public use zoning districts may be increased to a maximum of eight (8) feet in height.

(e) *Regulation of Fences in Nonresidential Zoning Districts:* The height of fences located in nonresidential zoning districts including fences erected by the City of Newton in the public use districts shall not exceed eight (8) feet in height.

(f) *Regulations Applicable to All Fences:* The following regulations shall be applicable to all fences, including those erected by the City of Newton, regardless of the zoning district in which the fence is located.

(1) Fences must be positioned so that a finished side of the fence faces away from the lot on which it is constructed. Fences should follow the natural contours of the ground and shall be made of appropriate materials.

(2) No fence shall be constructed wholly or in part of barbed wire or razor wire. There shall be no sharp prongs on the top of a chain link or similar fence and all such prongs shall be either meshed or turned over.

(3) A legal nonconforming fence may be repaired. Restoration of said fence with materials different from the materials of the original fence or reconstruction or replacement of equal to or greater than 50% of a fence with the same or different materials shall not be considered a repair, but shall be considered the erection of a new fence that must comply with the requirements of this ordinance.

(4) Fences located in a local historic district must receive a Certificate of Appropriateness, Non-Applicability or Hardship from the local historic district commission prior to submitting an application for a fence permit.

(5) Scenic Road Fences. In order to maintain the rural character of all designated scenic roads, no stockade fences or other fences with solid sections excepting stone fences shall be permitted bordering or parallel to the front lot line along a designated scenic road. Notwithstanding the height regulations set out in subsections (d) and (e) above, no fence bordering or parallel to the front lot line along a designated scenic road may exceed four (4) feet in height above the natural grade.¹

(6) Visibility on Corner Lots. No fence on a corner lot shall be erected or maintained more than four (4) feet above the established street grades within a triangular area determined by each of the property lines abutting each corner and an imaginary diagonal line drawn between two points each of which is located twenty-five (25) feet along the aforesaid property lines of said lot abutting each of the intersecting streets. The owner of property on which a fence that violates the provisions of this section is located shall remove such fence within thirty (30) days upon receipt of notice from the Commissioner of Inspectional Services that

¹ There are 17 designated Scenic Roads in Newton: Woodland Road, Hancock Street, Grove Street, Concord Street, Fuller Street, Valentine Street, Highland Street, Waban Avenue, Woodcliff Road, Lake Avenue, Sumner Street, Hobart Road, Dudley Road, Mill Street, Hammond Street, Chestnut Street and Brookside Avenue.

the fence violates the provisions of this section and creates a traffic hazard in the judgment of the City Traffic Engineer.

(SEE DIAGRAM----VISIBILITY ON CORNER LOTS)

(g) *Exemptions for Certain Types of Fences:*

(1) Temporary or Construction Fences: A temporary or construction fence not exceeding six (6) feet in height or such other height as may be required by the State Building Code may be erected without a fence permit for the period of the event requiring the temporary fence or for the duration of construction.

(2) Protective Measure Fence: A fence that does not comply with this ordinance may be erected in the interest of public safety and to protect an enclosed area and the property therein or to deny access to a potentially dangerous property or location if, at the time a fence permit is requested, the Commissioner of Inspectional Services determines that a fence that complies with the regulations of the ordinance does not provide the required public safety, security or protection. An individual who has been denied a fence permit for a protective measure fence by the Commissioner may appeal such denial to the Urban Design and Beautification Commission in accordance with the procedure for such appeals established by the Commission. The Urban Design and Beautification Commission shall issue the fence permit for the protective measure fence if the Commission determines that the proposed fence is necessary to provide the required public safety, security or protection.

(h) *Exceptions:* The Urban Design and Beautification Commission may grant exceptions to the provisions of this ordinance in accordance with the procedures for such exceptions established by the Commission where it determines that owing to conditions especially affecting a particular lot, compliance with the provisions of this ordinance would involve substantial hardship, financial or otherwise, to the individual requesting the exception, and the desired relief may be granted without substantially nullifying or substantially derogating from the intent and purposes of this ordinance.

(i) Nothing in this ordinance shall relieve any person erecting a fence from compliance with any other applicable statute, ordinance or regulation, including but not

limited to, the State Building Code, (780 CMR), G.L. c. 49, and Chapter 30, the Revised Zoning Ordinances, as amended.

(j) *Penalty:* Whoever violates any of the provisions of this ordinance shall be punished by a fine of not more than fifty (\$50) dollars for each day during which the violation continues. Where non-criminal disposition of specified sections of this ordinance by civil fine has been provided for in sections 20-20 and 20-21 of the Revised Ordinances, as amended, pursuant to the authority granted by G.L. c. 40, sec. 21D, said violation may be enforced in the manner provided in such statute. The civil penalty for each such violation is set out in section 20-21(c).

(k) *Enforcement:* The Commissioner of Inspectional Services shall enforce all provisions of the ordinance, including instituting all necessary administrative or legal action to assure compliance therewith. Any person found to be in violation of the ordinance shall receive a written warning and a minimum of thirty (30) days to remediate all violations thereof prior to the institution of any enforcement action by the Commissioner.

Approved as to legal form and character

Daniel M. Funk
City Solicitor

Sample Fence Permit Application

Applicant Name (Print): _____

Address: _____

City/Zip: _____

Telephone: _____

Signature: _____ Date: _____

Description of where fence is to be erected: _____

Type of fence construction: _____

Height of fence: _____

Proposed Date of Installation: ____/____/____

Installation Company: _____

Historic District or Scenic Road: _____

Please attach diagram showing proposed location, length, and setback of the proposed fence on the lot, the location of property lines, and relevant product information. Please include relevant setbacks and any necessary landscaping information.

Commissioner of Inspectional Services Recommendation: (Approve) (Deny)

Signature: _____ Date: _____